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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,850	03/19/2004	Joseph J. Walto	26.2.C20/C/USA	7511
61145 7590 06/12/2008 JAMES W. MILLER, ATTORNEY 527 MARQUETTE AVENUE SUITE 1960, RAND TOWER MINNEAPOLIS, MN 55402				
EXAMINER				
UNDERWOOD, DONALD W				
ART UNIT		PAPER NUMBER		
3652				
MAIL DATE		DELIVERY MODE		
06/12/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/804,850

Applicant(s)

WALTO ET AL.

Examiner

Donald Underwood

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5 and 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-5 and 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2, 5, 7, 9, 10, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toro Dingo Tire-Over-Rubber Tracks Brochure in view of Woerner and Morrison.

It would have been obvious to provide the motor under the hood in the Brochure in view of the teaching in Woerner (element 20) to provide protection for the motor and operator.

It would also have been obvious to remove the operator supports in the Brochure and resize the device to walk behind in view of the teaching in Morrison (figures 1 and 5).

Claims 2, 5, 7, 9, 10, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finn Skid Steer 250 in view of Woerner and Morrison.

It would have been obvious to substitute tracks as taught by Woerner for the wheels in Finn Steer 250 to provide a machine for use on soft dirt. Note the arms in Finn Steer 250 are located below the intake comprising part of the engine cover, i. e., the hood. Moreover the claim is broad enough to read on just the lower ends of the booms dropping below the hood as is the case in Skid Steer 250.

It would also have been obvious to remove the operator supports in Skid Steer 250 and resize the device to walk behind in view of the teaching in Morrison (figures 1 and 5).

Claims 3, 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toro Dingo Tire-Over-Rubber Tracks Brochure in view of Woerner and Morrison as applied to claims 2 and 7 above, and further in view of Bamford.

It would have been obvious to substitute a single arm and actuator including a cross member for the double arms in Toro Dingo Tire-Over-Rubber Tracks Brochure in view of the teaching in Bamford. See cross member 70 and actuator link 73 in Bamford. This would have been an obvious substitution of equivalent arms.

Regarding claim 4, whether the arm was located on the right or left side of the frame would have been an obvious matter of choice since one arrangement provides no unobvious result over the other.

Claims 3, 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finn Steer 250 in view of Woerner and Morrison as applied to claims 2 and 7 above, and further in view of Bamford.

Bamford applied to Finn Steer 250 as applied to Toro Dingo Tire-Over-Rubber Tracks Brochure above.

Applicants' arguments have been carefully considered but are moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Underwood whose telephone number is 571-272-6933. The examiner can normally be reached on Mon-Thursday 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Donald Underwood/
Primary Examiner, Art Unit 3652

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